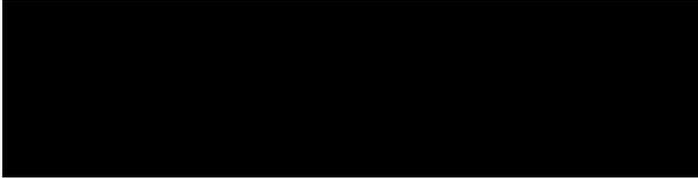




U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 246 50723 Office: CALIFORNIA SERVICE CENTER Date: AUG 19 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a computer software consulting and development company. It seeks to employ the beneficiary as a technical recruiter and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition on the ground that the proffered position does not qualify as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; (5) Form I-290B, counsel's appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner stated that its computer software business was established in 2000, had 15 employees and six contractors by 2003, and needed a technical recruiter “with some experience in recruiting and placements with [a] technical background in the areas of SAP, ABAP, BW, Visual basic, C++ and Java environment for in-house.” The duties of the job included resume sourcing, screening, technical interviewing, and proposing candidates for employment, the petitioner explained, as well as placing employees with clients. The petitioner indicated that it intended to hire the beneficiary for the position and asserted that he was qualified based on his “bachelor of technology (mechanical)” degree from Nagarjuna University in India, granted in March 1995. According to an educational credentials evaluation service in Atlanta, Georgia, the beneficiary’s degree is equivalent to a bachelor’s degree in mechanical engineering from a U.S. college or university.

In response to the RFE the petitioner provided additional details about the proffered position and the percentage of time required for the various duties. In addition to the recruiting duties previously described, the petitioner indicated that the beneficiary would be “involved in project development using SAP R/3, BW 2.1C, ABAP 4.6C and conduct cross platform training sessions for existing employees in BW reporting.” The percentage of time required by each duty would be as follows:

- 50% As a technical recruiter – screening the candidates, technical interviews, making offer to the selected candidates.
- 40% As an experienced programmer analyst – working on analysis, design and project development whenever there is a need for any of the clients.
- 10% Training existing employees on SAP, BW, ABAP, and Reports.

The minimum educational requirement for the position, according to the petitioner, is a bachelor’s degree in computers; electronics; electrical, mechanical or civil engineering; physics; chemistry; mathematics; or the equivalent.

In his decision the director determined that the record failed to establish the petitioner’s need for the services of a technical recruiter or that the proffered position qualified as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the proffered position qualifies as a specialty occupation because it requires at least a bachelor’s degree in computer science, electronics, mathematics, physics, chemistry; in an engineering area such as computer science, electronics, mechanical, electrical, or chemical; or in a related field. Counsel re-estimates the percentage of time required for the three duty categories as 70% for technical recruiting activities, 20% for training new employees on computer applications and databases, and 10% on technical support to clients. Counsel asserts that the position of technical recruiter falls within the occupational category of Human Resources, Training, and Labor Relations Managers and Specialists as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, and cites an excerpt from the *Handbook* indicating that employers usually seek college graduates with a technical or business background for recruiter positions. The petitioner’s business is growing, counsel asserts, and needs a technical recruiter to support the company’s expected increase in employees. A series of internet job announcements from other companies for technical recruiters has

been submitted with the appeal, which demonstrates in counsel's view that a bachelor's degree is the minimum requirement for such positions.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the proffered position encompasses elements of two different occupational categories in the DOL *Handbook*. The AAO agrees with counsel that the position of technical recruiter fits generally within the *Handbook's* occupational category of Human Resources, Training, and Labor Relations Managers and Specialists. The pertinent parts of that broad occupational category are explained in the *Handbook*, 2004-05 edition, at 47-48:

Employment, recruitment, and placement specialists recruit and place workers
Recruiters screen, interview, and sometimes test applicants. They also may check references and extend job offers

Training and development managers and specialists conduct and supervise training and development programs for employees.

As the proffered position also includes computer-related training and technical support duties, however, the AAO determines that the job also fits within the *Handbook's* occupational category of Computer Support Specialists and Systems Administrators. As explained, in pertinent part, at page 103 of the *Handbook*:

Computer support specialists provide technical assistance, support, and advice to customers and other users These troubleshooters interpret problems and provide technical support for hardware, software, and systems

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

As for the training and education required for human resources and training managers, the *Handbook* states the following:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources [and] training . . . managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Handbook, id., at 49. Thus, employers do not normally require an entry-level human resources or training manager to have a baccalaureate or higher degree in a specific specialty directly related to the position.

As for computer support specialists and systems administrators, the *Handbook* states that:

Due to the wide range of skills required, there are a multitude of ways workers can become a computer support specialist or a systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. Completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

Handbook, id., at 104. As indicated above, a four-year baccalaureate degree in a specific computer-related specialty is not the normal minimum requirement for entry into a position as a computer support specialist or systems administrator. Many companies accept two-year associate degrees, or relevant work experience without any formal education, for computer support specialists. For systems administrators a bachelor's degree in a field unrelated to computers may be sufficient.

Based on the foregoing discussion, the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Counsel refers to the numerous internet job announcements in the record for technical recruiters. Few of the announcements specify, however, that a baccalaureate degree in a computer-related specialty is required for the position. Many of the advertisements simply indicate that a bachelor's degree is required, without indicating a

specialty area. Others indicate that a particular type of degree is preferred, but do not state that it is required. Several of the advertisements state that related experience can substitute for a degree of any kind. Thus, the internet job announcements do not establish that a degree in a specific specialty is required for technical recruiter positions in the computer industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner shown that the proffered position in this case is so complex or unique that it can only be performed by an individual with a degree in a specific specialty, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner referred in its response to the RFE to an employee with a bachelor's degree in computer science with experience in recruiting. But it did not identify that employee, describe his or her job duties in detail, or state that such employee occupied the position of technical recruiter. The evidence of record indicates that the petitioner's technical recruiter position is newly created. Since there is no hiring history for the position, the petitioner cannot establish that it normally requires the technical recruiter to have a specialty degree or its equivalent. Thus, the position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the specific duties of the human resources manager are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the petitioner has failed to demonstrate that its human resources manager meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.